GENERAL PROBLEMS CONNECTED WITH THE ADMINISTRATION OF JUSTICE[1]

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The administration of justice in the United States, the general topic for discussion at this meeting, is one that may be considered from so many points of view as to preclude the possibility of covering the entire field at a single meeting of your society. It is a theme fruitful in suggestion and serious in import to those who look beneath the ebb and flow of surface waters to discover the currents and causes which control the movements of greater bodies. The consideration of this general topic, and of those particular subjects growing out of it to be discussed at this meeting, is timely because in the natural evolution of governmental affairs we have reached a period in which all thoughtful persons are concerned not only as to the proper functions of each branch of government, but as to the manner in which those functions of whatever kind or character shall be performed. The administration of justice is a broad and comprehensive subject. It is perhaps not too much to say that the individual citizen must of necessity depend upon the proper administration of justice in the courts for protection to life, liberty and property more than upon any other force or power in government. The courts are the tribunals which are and always should be open to every citizen, rich or poor, humble or powerful, to redress every injury suffered and to protect every right guaranteed to him by the constitution and laws of his state or country.

When our forebears, dissatisfied with conditions existing in their fatherlands, turned their faces westward it was in the hope of establishing here upon new and virgin soil a representative government under which all men should enjoy the equal protection of just laws. Through the trials and privations of the Colonial period they fostered the spirit of independence and steadily advanced the cause of popular government. Those were years of trial and tri-

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umph. The people lived close to nature and drank deep from the fountains of eternal truth. They looked upon government as a means to an end—the end being that all men should be treated as free and equal, and that each citizen should be entitled to the fullest protection of the law. The minds and hearts of men were united in an effort to work out these results. Strong minds and resolute hearts were developed in that period, so that when the Revolution came we had men—strong, sturdy, capable men—to cope with every situation presented in the formation of a new and at that time experimental form of government. It was a psychological moment in the governmental affairs of mankind. It was the beginning of a new order of things in which greater rights and liberties were vouchsafed to the people, and less arbitrary and dictatorial power lodged in the ruler. They were momentous questions which confronted the wise and patriotic men of those days. Unrestricted liberty to the people meant license and anarchy, and no nation could long endure upon such a foundation. Unlimited power lodged in the executive was not to be thought of, because this was the evil from which they sought an escape. It was neither feasible nor practicable to attempt to conduct the multitudinous affairs of the people by direct legislative action. The best thought of the best minds of the original thirteen colonies was seriously and earnestly directed to the proper solution of these great questions. The federal constitution is the result, and looking at it from this distance I am impressed with the force of the thought once uttered by a great statesman, not of our own country, who said in substance, that as a wise solution of the governmental affairs of a great people, it was the most wonderful instrument ever formulated at a given time by the brain and purpose of man.

This is strong language and naturally suggests the inquiry, what does the constitution contain to deserve such a tribute? We who from youth up have enjoyed as of course the protection and privileges of a free government are prone to treat indifferently, or indeed to entirely ignore the foundation causes from which our blessings flow. In periods of business depression and social unrest there is a tendency to disregard what is and has been, and to drift out upon the uncertain sea of doubtful expedients. At such times it is well to study again the lessons of wisdom taught by our forefathers, and learned and approved by succeeding generations. It

is pertinent in this connection to inquire what kind of government was established under our constitution. The answer is simple, because it is written in plain language all over our organic law. It is a government of co-ordinate branches, each branch having its own particular functions, and one intended to be a check upon the other. The whole scheme is one of checks and balances in the performance of governmental functions by the co-ordinate branches. The legislative branch, most quickly responsive to public opinion, makes the laws. The judiciary, intended to be conservative, construes the laws and defines the constitutional limitations which the people by the adoption of the constitution placed upon themselves and upon every branch of government. The executive is clothed with power to make recommendations to the legislative branch, and to enforce through the various departments the laws as enacted and construed. If there is doubt as to the validity, or scope, or meaning of a law, it is the duty of the judiciary to determine every such question. A government of co-ordinate branches, each acting within its own proper sphere, makes an orderly and well-regulated system.

Our experience for more than one hundred and twenty years, with a rapidly increasing population made up by the intermingling of all races, and the development of a new country with vast areas and unlimited resources, has demonstrated the wisdom, power and efficiency of the form of government adopted. Under the constitution the judiciary was intended to be and is the great conservative force in government, and no one who studies its judgments and decrees can doubt that it has met fearlessly and patriotically the responsibilities cast upon it. Our judges are selected from the people, and as a rule live in close touch with them. They are actuated by good motives and honorable purposes. Their decisions may not always be popular, but they are in nearly every instance right under the law. They believe that ours is a government of law, and that it is the duty of a court to construe the law as written, rather than to attempt by construction to write into its provisions something not intended. It sometimes happens that in the administration of the law a seeming injustice may be done an individual suitor, but I am quite sure that it is the disposition of every judge to work out the equities of each particular case, so far as it can be done, without violating established and settled rules of law.

It is a mistake, however, to disregard wholesome and settled

rules and principles in order to work out what seems to be an equitable result in a particular case. It is safe to say that as a rule a precedent established on the equities of a particular case makes bad law generally. It is of vital importance that rules of law affecting the rights and liberties of the people should be fixed, permanent and settled. No higher duty rests on any court than fearlessly to maintain and impartially administer settled rules of law. This applies to both civil and criminal actions. It is much better that a rule of law should be settled, even if at times we question the rule, than that it should be unsettled and doubtful, so that no one with certainty can say what the rule is, or indeed that there is any rule at all. The doctrine of *stare decisis* grows in favor with the tenure of judicial life. At the beginning of a judicial career it is not uncommon to take the view that old laws should be amended, and that old rules are antiquated and not suited to modern conditions.

It is but natural for any one holding such views to doubt the value of precedent, and to attach but little importance to the rule of decided cases. A few years' experience on the bench has a wholesome tendency to check such a predisposition. The task of making a new rule to cover the exigencies of each particular case as it arises is hopeless, and if such a thing could be done there would be no settled law, and no one could assert with confidence a supposed legal right. My experience teaches me that it is better to know what the settled law is than to speculate about what it ought to be. It is of the highest importance that stability, certainty and permanency should characterize the administration of justice by the courts in order that the people may know what the law is, and be in position to enjoy and demand its equal protection. The court of which I have the honor to be a member has for two hundred years stood on the ancient ways, with a wholesome regard for the wisdom of those who preceded them in judicial office and a tenacious adherence to settled principles in the administration of the law.

It is true that methods of procedure have been changed from time to time to meet new conditions, but fundamental rules of property and principles of law have been upheld from time immemorial. It may be argued, indeed it is often asserted, that this view is too conservative and not in keeping with the march of progress in the affairs of mankind. My answer is that courts were never intended to be crusaders, and that their true function is in the exercise of

proper restraints upon radical and unwholesome tendencies. Of course in the exercise of such power courts must act upon statutory authority and within constitutional limitations. When disease is epidemic every quack has a nostrum, but such nostrums as often kill as cure. So, too, when the body politic is disordered there are always those both in public and in private life with a stock of cure-all remedies to prescribe. The prescriptions generally take the form of proposed new legislation. The modern tendency is to attempt to regulate the morals and business affairs of the people by statute. Just how far we should go in this direction is a great question. There is but little in the experience of mankind to warrant the belief that men can be made good or just by act of assembly. It is true, of course, that crimes must be defined, rights declared and rules of property prescribed by law, else there could be no orderly and well-regulated government.

The great question now is and always has been where to draw the line. Many thoughtful men think there is just as much danger in having too many laws as in not having enough. It has seemed to me that what is needed at the present time is not so much new laws, but respect for and enforcement of old ones. At such a time courts must and can be depended upon to administer impartially the law as it is written. The enforcement of existing law is more efficacious in producing just and equitable results than the more doubtful expedient of hasty and drastic legislation. Every right-thinking person should be in sympathy with any movement that has for its purpose the uplifting of his fellow man and the improvement of his social conditions. I believe with the old Psalmist, that righteousness exalteth a nation, but in no proper sense can a nation be deemed righteous that is not law-abiding. Law defined and administered by courts of justice is the foundation upon which righteous action must be predicated in dealing with the secular affairs of men.

Respect for law and order is one great need of our present civilization. The duty of respecting and obeying the law rests equally upon the rich and the poor, the great and the small. The law must be no respecter of persons, and the highest duty of a court is to administer it without fear or favor, so that its restraints may be felt by the most powerful individual or corporation, as well as by the humblest citizen. We hear some complaints about delays in the trial of cases, and if these complaints are well founded, courts

should do what they can to extend relief. This is a practical question the facts of which are not familiar to me. Speaking for our own court, it is gratifying to be able to state that our lists are disposed of with reasonable expedition. During the past few years the average time from the date of the argument to the handing down of the opinion was sixty days.

At the October term, in Pittsburg, last year, two hundred and thirty cases were on our list. All of these cases, with the exception of five, were heard or disposed of, and the opinions handed down in Philadelphia on the first Monday of January following. It is safe to say that at the close of the present term, sometime next June, there will not be a half a dozen cases undisposed of in the eastern district. It seems to me this is about as expeditious as is consistent with good work. But I have trespassed upon your time too long, for you have come to hear those who are to discuss the particular topics assigned them. I thank you for the privilege of presiding over your deliberations at this session. In behalf of the American Academy I extend a cordial welcome to all, strangers and members, assembled here, either to hear or participate in the proceedings of this annual meeting.